

NTSB Order No.  
EM-109

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D. C.  
on the 29th day of June 1984

JAMES S. GRACEY, Commandant, United States Coast Guard,

v.

JOHN W. SCHUILING, Appellant.

Docket No. ME-104

ORDER DISMISSING APPEAL

The Coast Guard has filed a motion to dismiss the instant appeal on the ground that the Board lacks jurisdiction to review the matter. For the reasons that follow we will grant the motion.

The appeal in this proceeding challenges an order of admonition Administrative Law Judge Peter A. Fitzpatrick issued in a Decision and Order dated December 22, 1982, following an evidentiary hearing on a charge of misconduct filed against the appellant.<sup>1</sup> The Vice Commandant affirmed the law judge's disposition in a decision (Appeal No. 2341) dated February 6, 1984.<sup>2</sup> As the Coast notes in its motion, the Board has previously ruled that its appellant review authority under 49 U.S.C. 1903 (a) (9) (B) extends only to Commandant decisions "on appeals from orders of any administrative law judge revoking, suspending or denying a license... in proceedings under section 4450 of the Revised Statutes of the United States (46 U.S.C. 239)...." See

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<sup>1</sup>The misconduct charge was predicated on three specifications concerning appellant's service as Chief Engineer aboard the SS JACKSONVILLE in October, 1982. Appellant was therein alleged to have failed to notify the Coast Guard of the flooding of the vessel's main propulsion motor while in the port of Baltimore and of the subsequent failure of that motor when the vessel was at sea, and to have allowed repairs to the motor "without the cognizance" of the Coast Guard.

<sup>2</sup>Copies of the decisions of the Vice Commandant (acting by delegation) and the law judge are attached.

Commandant v. Leskinen, NTSB Order EM-59 (1977).<sup>3</sup> Inasmuch as this proceeding does not involve a license denial, suspension or revocation, the Vice Commandant's decision does not come within the Board's review authority, and the appeal from his affirmation of the law judge's order of admonition must be dismissed.<sup>4</sup>

ACCORDINGLY, IT IS ORDERED THAT:

1. The motion to dismiss is granted, and
2. The instant appeal is dismissed.

BRUNETT, Chairman, GOLDMAN, Vice Chairman, BURSLEY and GROSE, Members of the Board, concurred in the above order.

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<sup>3</sup>We concluded in Leskinen that because "[n]o mention is made ... [of an order of admonition] in our statute, which contains a specific listing of the orders which are reviewable..." we had no jurisdiction and that "the Commandant's decision, affirming the order of admonition against appellant, represents the final administrative action to be taken" (Leskinen, supra, at 2).

<sup>4</sup>Appellant's reply in opposition to the motion to dismiss asserts that his appeal must be heard by the Board as a matter of right because it identifies the types of issues that our procedural regulations (49 CFR Part 825) allow an appellant to present to the Board for consideration. Appellant's point is without merit. Our procedural regulations apply only to those appeals we are authorized to hear. That authority flows from the statute cited above, not from the regulations the Board has adopted to execute the authority. The Board, of course, has no discretion either to enlarge its review function or to disregard limitations placed on it by law.